

No. 14488

**United States
Court of Appeals**
for the Ninth Circuit

G. L. CURTIS COMPANY,

Appellant,

vs.

KENNETH S. HAMMES, Trustee in Bankruptcy
of the Estate of ORACLE ENGINEERING
AND SALES CORPORATION, a Corporation,
Bankrupt,

Appellee.

Transcript of Record

**Appeal from the United States District Court for the
District of Arizona**

FILED

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—11-5-54

PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original **certified record** are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

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In the United States District Court
for the District of Arizona

No. B-641—Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES CORPORATION, an Arizona Corporation,

Bankrupt.

PETITION OF G. L. CURTIS COMPANY FOR
REVIEW OF ORDER ENTERED BY THE
REFEREE ON THE 9TH DAY OF OCTOBER,
1953, GRANTING PETITION OF
THE RECEIVER TO SELL PERSONAL
PROPERTY

To the Honorable Stanley A. Jerman, Referee in
Bankruptcy:

The petition of G. L. Curtis Company respectfully represents:

I.

That your petitioner is aggrieved by the order herein of Stanley A. Jerman, Referee in Bankruptcy, dated the 9th day of October, 1953, a copy of which order is annexed hereto and marked Exhibit A, and by reference made a part hereof.

II.

That the Referee erred in his Finding of Fact No. 1, for the reason that said Finding of Fact is contrary to the evidence for the reason the Referee failed to find that the sum of \$6,500.00 was deliv-

ered to the Oracle Engineering and Sales Corporation in payment of the purchase price for certain personal property and the finding is contrary to the evidence which shows:

That M. E. Zetterholm and Ira L. Hart as Trustees who received the check drawn by G. L. Curtis Company, Exhibit No. 1, and delivered in exchange for the Bill of Sale executed by Oracle Engineering and Sales Corporation, Exhibit No. 3, received said money and used the same on behalf of Oracle Engineering and Sales Corporation in a revolving fund in the sum of \$30,000.00 theretofore paid into said fund by G. L. Curtis and which \$30,000.00 was considered as a loan secured by assignments of certain accounts of Oracle Engineering and Sales Corporation and was administered by said Trustees for the use and benefit of Oracle Engineering and Sales Corporation and was in addition to the \$30,000.00 theretofore paid into said fund and secured by said assignment.

III.

That the Referee erred in his Finding of Fact No. 2, for the reason that said Finding of Fact is contrary to the evidence in that the evidence shows:

That on the 6th day of March, 1952, G. L. Curtis Company executed and delivered to Oracle Engineering and Sales Corporation its check numbered 4, in the sum of \$6,500.00 payable to H. E. Zetterholm and Ira L. Hart, Trustees, Exhibit No. 1.

That in exchange for the check of G. L. Curtis Company, said Exhibit No. 1, Oracle Engineering and Sales Corporation executed its Bill of Sale to G. L. Curtis Company, Exhibit No. 3, on the 6th day of March, 1952, for the following items of personal property:

8166 pounds—69 sheets—.312 4130 steel
2864 pounds—25 sheets—.312 4130 steel
7532 pounds—62 sheets—5/16" x 18" x 72" 4130 steel
4732 pounds—40 sheets—5/16" x 18" x 72" 4130 steel

IV.

That the Referee erred in making his Finding of Fact No. 3 in that the finding is contrary to the evidence and the Referee in accordance with the evidence should have found:

That on the 6th day of March, 1952, G. L. Curtis Company executed and delivered to Oracle Engineering and Sales Corporation its check numbered 4, in the sum of \$6,500.00 payable to H. E. Zetterholm and Ira L. Hart, Trustees, Exhibit No. 1.

That in exchange for the check of G. L. Curtis Company, said Exhibit No. 1, Oracle Engineering and Sales Corporation executed its Bill of Sale to G. L. Curtis Company, Exhibit No. 3, on the 6th day of March, 1952, for the following items of personal property:

8166 pounds—69 sheets—.312 4130 steel
2864 pounds—25 sheets—.312 4130 steel
7532 pounds—62 sheets—5/16" x 18" x 72" 4130 steel
4732 pounds—40 sheets—5/16" x 18" x 72" 4130 steel

That on the said 6th day of March, 1952, the personal property described in the Bill of Sale executed by Oracle Engineering and Sales Corporation was in the possession of Allison Steel Manufacturing Company in Phoenix, Arizona;

That on the 14th day of March, 1952, Oracle Engineering and Sales Corporation notified Allison Steel Manufacturing Company that the property described in the Bill of Sale executed by Oracle Engineering and Sales Corporation on the 6th day of March, 1952, Exhibit No. 3, was the property of G. L. Curtis, by letter, Exhibit No. 4 herein;

That on the 20th day of March, 1952, Allison Steel Manufacturing Company acknowledged to Oracle Engineering and Sales Corporation that it recognized the property described in the Bill of Sale executed on the 6th day of March, 1952, Exhibit No. 3, as the property of G. L. Curtis;

That M. F. Zetterholm and Ira L. Hart as Trustees who received the check drawn by G. L. Curtis Company, Exhibit No. 1, and delivered in exchange for the Bill of Sale executed by Oracle Engineering and Sales Corporation, Exhibit No. 3, received said money and used the same on behalf of Oracle Engineering and Sales Corporation in a revolving fund in the sum of \$30,000.00 theretofore paid into said fund by G. L. Curtis and which \$30,000.00 was considered as a loan secured by assignments of certain accounts of Oracle Engineering and Sales Corporation and was administered by said Trustees for the use and benefit of Oracle

Engineering and Sales Corporation and was in addition to the \$30,000.00 theretofore paid into said fund and secured by said assignment.

V.

That the Referee erred in making his Finding of Fact No. 4 in that the finding is contrary to the evidence for the reason that said finding is not complete in that the Referee failed to also find according to the evidence that:

On the 14th day of March, 1952, Oracle Engineering and Sales Corporation notified Allison Steel Manufacturing Company that the property described in the Bill of Sale executed by Oracle Engineering and Sales Corporation on the 6th day of March, 1952, Exhibit No. 3, was the property of G. L. Curtis, by letter, Exhibit No. 4 herein;

On the 20th day of March, 1952, Allison Steel Manufacturing Company acknowledged to Oracle Engineering and Sales Corporation that it recognized the property described in Bill of Sale executed on the 6th day of March, 1952, Exhibit No. 3, as the property of G. L. Curtis.

VI.

That the Referee erred in his Finding No. 5 in that the correct statement of the law is:

The Bill of Sale executed by Oracle Engineering and Sales Corporation, Exhibit No. 3, to G. L. Curtis Company constituted a sale of the steel described in said Exhibit No. 3 to G. L. Curtis Company;

The Bill of Sale executed by Oracle Engineering and Sales Corporation to G. L. Curtis Company, Exhibit No. 3, constituted a transfer of the property of Oracle Engineering and Sales Corporation in exchange for a present fair consideration as defined by the Bankruptcy Act;

The transfer of the property of Oracle Engineering and Sales Corporation to G. L. Curtis Company did not constitute a preference under the provisions of the Bankruptcy Act.

VII.

The Referee erred in his Finding No. 6 in that the same is not a correct conclusion of law from the findings of the Referee in that the correct Conclusions of Law from said findings of the Referee are:

The Bill of Sale executed by Oracle Engineering and Sales Corporation to G. L. Curtis Company, Exhibit No. 3, constituted a transfer of the property of Oracle Engineering and Sales Corporation in exchange for a present fair consideration as defined by the Bankruptcy Act;

The notice to Allison Steel Manufacturing Company executed by Oracle Engineering and Sales Corporation, Exhibit No. 4, that the steel was the property of G. L. Curtis Company and the acceptance thereof by Allison Steel Manufacturing Company, Exhibits Nos. 5 and 6, constituted a change of possession within the terms of Section 62-502, Arizona Code Annotated, 1939;

The execution of the Bill of Sale, Exhibit No. 3, and the change of possession of the steel described therein constituted a pledge for the repayment to G. L. Curtis Company of the sum of \$6,500.00 paid by it to H. E. Zetterholm and Ira L. Hart, Trustees' Exhibit No. 1;

By the provisions of Section 62-523, ACA, 1939, the Bill of Sale being accompanied by change of possession, although intended to operate as a lien upon personal property instead of a transfer of ownership, was not required to be recorded to be valid against third persons or creditors of Oracle Engineering and Sales Corporation, and is not fraudulent or voidable by any creditor of the bankrupt, or by the Receiver herein pursuant to the provisions of the Bankruptcy Act;

G. L. Curtis Company is entitled to the possession of the steel described in Bill of Sale, Exhibit No. 3, until it is paid the sum of \$6,500.00 by Oracle Engineering and Sales Corporation, or the Receiver herein.

VIII.

The Referee erred in his failure to grant the petition of G. L. Curtis Company for a declaration that G. L. Curtis Company is the owner of the personal property described therein, a copy of which petition is attached hereto and by reference made a part hereof and marked Exhibit B.

IX.

The Referee erred in granting the Receiver's petition to sell the personal property, a copy of

which is attached hereto and by reference made a part hereof and marked Exhibit C, for the reason that said personal property is the property of G. L. Curtis Company.

X.

The Referee erred in failing to enter the Findings of Fact and Conclusions of Law and each thereof proposed by G. L. Curtis Company, a copy of which is attached hereto and by reference made a part hereof and marked Exhibit D.

XI.

The Referee erred in overruling the objections of G. L. Curtis Company to the Receiver's Petition to Sell Property, a copy of which objections is attached hereto and by reference made a part hereof and marked Exhibit E.

XII.

The Referee erred in overruling the objections of G. L. Curtis Company to the Findings and Order prepared by the Receiver a copy of which is attached hereto and by reference made a part hereof and marked Exhibit F.

Wherefore, your petitioner prays that said order of the Referee be reviewed by a Judge in accordance with the provisions of the Act of Congress relating to bankruptcy and that said order be reversed and that the personal property described in the petition of G. L. Curtis Company be declared to be the property of G. L. Curtis Company and that the Court find that the Receiver, Kenneth S.

Hammes, has no right, interest or claim of any kind or character to the said steel and that the Receiver be directed to surrender said steel to G. L. Curtis Company and that your petitioner have such other and further relief as is just.

G. L. CURTIS COMPANY,

By /s/ G. L. CURTIS,

President.

SCRUGGS AND RUCKER,

By /s/ EDWARD W. SCRUGGS,

Attorneys for Petitioner.

Duly verified.

EXHIBIT A

In the District Court of the United States
in and for the District of Arizona

No. B-641, Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES CORPORATION, an Arizona Corporation,

Bankrupt.

FINDINGS AND ORDER

The petition of Kenneth S. Hammes duly appointed Receiver herein praying for an order of this court permitting him to sell or dispose of certain personal property set forth below, free and clear of liens at public or private sale without fur-

ther notice to creditors came before me in the Federal Courtroom, Tucson, Arizona, on the 11th day of September, 1953, at 2:30 p.m.

An objection to the granting of said petition was filed by the G. L. Curtis Company at that time, which objection also incorporated a petition of said G. L. Curtis Company praying that the court enter its order determining that said G. L. Curtis Company be declared the owner of said steel and that the Receiver have no right, interest or claim to it.

Whereupon sworn, testimony was taken from H. W. Murphy, President of the above bankrupt, representatives of the Allison Steel Manufacturing Company of Phoenix where said steel is stored, and M. E. Zetterholm of the Bank of Douglas, Tucson, Arizona, and the court found the following:

1. That the said G. L. Curtis Company advanced \$6,500.00 into a certain trust fund for which said M. E. Zetterholm, among others, acted as trustee and by the terms of said trust the monies contained therein were to be used in the operation of the bankrupt.

2. That said monies advanced by said G. L. Curtis Company were in the nature of a loan to be fully refunded to it from said trust by paying over to it the proceeds of certain contracts then being performed by the bankrupt.

3. That said \$6,500.00 was paid into said trust by check payable to M. E. Zetterholm and Ira L. Hart, trustees, and that G. L. Curtis Company there-

upon received from the bankrupt, as security for said advance, a bill of sale.

4. That the steel at the time of the giving of the security was the property of the bankrupt, and was stored to the account of the bankrupt.

5. That said bill of sale was given as a chattel mortgage and was unrecorded as of the time of the filing of the original petition herein.

6. That said chattel mortgage (bill of sale) is valid as between the parties appearing thereon but has no force and effect as against the Receiver in bankruptcy herein.

Wherefore the court being fully advised in the premises as to the law and the facts, having heard all the testimony of the witnesses and arguments of counsel, and both sides having rested their case;

It Is Ordered, Adjudged and Decreed that the Receiver be and hereby is authorized and permitted to sell or dispose of the following-described property located at the Allison Steel Manufacturing Company, 19th Avenue and Southern Pacific Tracks, Phoenix, Arizona, to wit:

193	pcs	5/16"	Plate	18"	x	72"	—weight	22,147	#
1	"		"	18"	x	56"		89	#
1	"		"	18"	x	48"		77	#
1	"		"	18"	x	24"		38	#

Total weight 22,351#

free and clear of liens at public or private sale without further notice to creditors and that said Allison Steel Manufacturing Company release the said steel to said Receiver or his order upon pay-

ment to said company of their charges as set forth in a letter to the receiver herein dated July 7, 1953; that the petition of the G. L. Curtis Company objecting to said sale and requesting that said G. L. Curtis Company be declared the owner of said steel is hereby denied, the title to said steel being vested in the Receiver herein free and clear of any claim or lien of said G. L. Curtis or G. L. Curtis Company.

Dated at Phoenix, Arizona, this 9th day of October, 1953.

STANLEY A. JERMAN,
Referee in Bankruptcy.

EXHIBIT B

In the United States District Court
for the District of Arizona

No. B-641, Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES COR-
PORATION, an Arizona Corporation,

Debtor.

PETITION

Comes now G. L. Curtis Company, hereinafter referred to as the petitioner, and alleges:

I.

That heretofore, on the 6th day of March, 1952, Oracle Engineering and Sales Corporation was the owner of certain sheet steel manufactured by the

Allison Steel Manufacturing Company, Phoenix, Arizona, as follows:

8166 pounds—69 sheets—.312 4130 steel

2864 pounds—25 sheets—.312 4130 steel

7532 pounds—62 sheets—5/16" x 18" x 72" 4130 steel

4732 pounds—40 sheets—5/16" x 18" x 72" 4130 steel

That said steel was stored by Oracle Engineering and Sales Corporation, the bankrupts herein, with Allison Steel Manufacturing Company, Phoenix, Arizona;

II.

That on the 6th day of March, 1952, this petitioner purchased said steel from Oracle Engineering and Sales Corporation, the bankrupt herein, and paid therefor the sum of \$6,500.00;

III.

That upon payment of said money, said bankrupt executed and delivered to this petitioner a Bill of Sale in form and substance as shown by Exhibit A attached hereto and by reference made a part hereof;

IV.

That there is attached hereto and by reference made a part hereof a copy of the cancelled check issued by petitioner to Oracle Engineering and Sales Corporation in payment for said steel;

V.

That recently in these proceedings, Kenneth S. Hammes, the receiver herein, has laid some claim to the ownership of said steel and has represented to Allison Steel Manufacturing Company, Phoenix,

Arizona, that as receiver in bankruptcy in these proceedings he is entitled to the same;

VI.

That through inadvertence, Allison Steel Manufacturing Company, Phoenix, Arizona, has continued to carry said steel as being held for the account of Oracle Engineering and Sales Corporation since the 6th day of March, 1952, whereas in truth and in fact said steel has been stored with Allison Steel Manufacturing Company by this petitioner;

Wherefore, petitioner prays the court to enter its order determining that G. L. Curtis Company is the owner of the steel aforesaid and herein described and that the receiver, Kenneth S. Hammes, has no right, interest or claim of any kind or character to said steel.

G. L. CURTIS COMPANY,

By SCRUGGS AND RUCKER,

Attorneys for Petitioner.

Duly verified.

EXHIBIT A

Bill of Sale

Know All Men by These Presents:

That Oracle Engineering and Sales Corporation, an Arizona corporation, party of the first part, for and in consideration of the sum of Ten Dollars, lawful money of the United States of America, to it in hand paid by G. L. Curtis Company, the party of

the second part, and other good and valuable considerations, the receipt whereof is hereby acknowledged, does by these presents grant, bargain and sell and convey unto the said party of the second part, its successors and assigns, the following-described property located at the Allison Steel Manufacturing Company, Phoenix, Arizona:

8166 pounds—69 sheets—.312 4130 steel

2864 pounds—25 sheets—.312 4130 steel

7532 pounds—62 sheets—5/16" x 18" x 72" 4130 steel

4732 pounds—40 sheets—5/16" x 18" x 72" 4130 steel

To Have and to Hold the same to the party of the second part, its successors and assigns forever; and the said party of the first part does for its successors and assigns covenant and agree to and with the said party of the second part, its successors and assigns, to warrant and defend the sale of the said property, goods and chattels hereby made unto the said party of the second part, its successors and assigns, against all and every person or persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, Oracle Engineering and Sales Corporation, a corporation, has caused these presents to be executed and its corporate seal to be hereunto affixed, all on this 6th day of March, 1952.

[Seal] ORACLE ENGINEERING AND SALES
CORPORATION,

By H. W. MURPHY,
President.

Attest:

ORAN SARRELS,
Secretary.

State of Arizona,
County of Pima—ss.

This instrument was acknowledged before me this 6th day of March, 1952, by H. W. Murphy, as President, and by Oran Sarrels, as Secretary, respectively, of Oracle Engineering and Sales Corporation, a corporation.

[Seal] HELEN E. MERKLEY,
Notary Public, Pima County,
Arizona.

My commission expires Jan. 7, 1955.

State of Arizona,
County of Pima—ss.

I, H. W. Murphy, President of Oracle Engineering and Sales Corporation, a corporation, declare on oath that the within-named Oracle Engineering and Sales Corporation, a corporation, is the sole owner of the chattels set out in the within and foregoing Bill of Sale, and that said chattels are clear, free and unencumbered.

Witness my hand this 6th day of March, 1952.

H. W. MURPHY.

Attest:

ORAN SARRELS,
Secretary.

Subscribed and sworn to before this day of
March, 1952.

[Seal]

HELEN E. MERKLEY,
Notary Public, Pima County,
Arizona.

My Commission Expires Jan. 7, 1955.

EXHIBIT B

91-179
1121

No. 4

Tucson, Arizona, March 6, 1952

Pay to

the order of H. E. Zetterholm and Ira L. Hart,
Trustees\$6,500.00

Sixty Five Hundred & 00/100.....Dollars

G. L. CURTIS COMPANY,

By G. L. CURTIS,
President.

To

The Bank of Douglas,
Tucson, Arizona.

Reverse

M. E. Zetterholm

Paid

Ira L. Hart

3-7-52

Trustees

91-179

EXHIBIT C

United States District Court
for the District of Arizona

B-641, Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES CORPORATION, an Arizona Corporation,

Bankrupt.

RECEIVER'S PETITION TO SELL
PERSONAL PROPERTY

Comes now Kenneth S. Hammes duly appointed Receiver in the above-named matter and respectfully petitions the court as follows:

That there presently is stored to the account of the above-named bankrupt at the Allison Steel Manufacturing Company, 19th Avenue and Southern Pacific Tracks, Phoenix, Arizona, the following-described personal property:

193 pcs	5/16"	Plate	18" x 72"	—weight	22,147 #
1	"	"	18" x 56"		89 #
1	"	"	18" x 48"		77 #
1	"	"	18" x 24"		38 #

Total weight 22,351 #

That said personal property was stored on said premises on or about the 9th day of August, 1952; that the above set forth personal property was paid for by the above-named bankrupt; that title to same

was taken in its name; that your Receiver has received a letter from the Allison Steel Manufacturing Company in answer to his inquiry pertaining to this matter, a copy of which is attached hereto and by reference made a part hereof. That a reading of said letter discloses certain values that may be placed upon said steel.

Wherefore your petitioner prays for an order of this court permitting him to sell or dispose of the above set forth personal property free and clear of liens at public or private sale without further notice to creditors and that said Allison Steel Manufacturing Company release the said property which they are holding as per their attached letter upon payment to them of their likewise set forth charges and for such other and further relief as the court may deem just.

/s/ KENNETH S. HAMMES,

KENNETH S. HAMMES,

Receiver and Petitioner.

Duly verified.

Allison Steel Manufacturing Company
 19th Avenue and Southern Pacific Tracks
 P.O. Box 6067, Alpine 8-7731
 Phoenix, Arizona

July 7, 1953.

Kenneth S. Hammes, Receiver,
 On Behalf of the Federal Court,
 Oracle Engineering & Sales Corporation,
 P.O. Box 5071,
 Tucson, Arizona.

Re: Oracle Engineering & Sales Corp.
 Case No. B-641, Tucson.

Dear Mr. Hammes:

In reply to your letter of June 30 regarding the steel plates we have stored in our yard, we give you the following information:

1. Stored for the account of Oracle Engineering & Sales.
2. Stored August 9, 1952.

3.

193 pcs	5/16"	Plate	18" x 72"	—weight	22,147#
1 "	"	"	18" x 56"		89#
1 "	"	"	18" x 48"		77#
1 "	"	"	18" x 24"		38#

Total weight 22,351#

4. Handling charges, etc., \$117.00. Interest from August 9, 1952, to July 9, 1953, \$8.58. Storage charges from August 9, 1952, to July 9, 1953, \$55.00.

5. Value to us, \$25.00 per ton as scrap. However, if the heat test reports and chemical analyses of this plate were available and the alloy content known, they might be sold at approximately their original value.
6. They are in good condition. 35 sheets are wrapped and approximately 90% are oiled.
7. They are stored under an open shed adjoining our warehouse.

Yours very truly,

ALLISON STEEL MFG.
COMPANY,

By PILLY S. MOYER,
Credit Manager.

PSM:s

EXHIBIT D

In the United States District Court
for the District of Arizona

No. B-641, Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES CORPORATION, an Arizona Corporation,

Debtor.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW PROPOSED BY G. L. CURTIS COMPANY ON PETITION OF THE RECEIVER
FOR AUTHORITY TO SELL CERTAIN
PERSONAL PROPERTY, OBJECTIONS
TO SUCH PETITION BY G. L. CURTIS
COMPANY AND PETITION OF G. L.
CURTIS COMPANY FOR ORDER DECLARING G. L. CURTIS COMPANY TO BE
THE OWNER OF CERTAIN PERSONAL
PROPERTY

This matter having come on regularly for hearing at Tucson on the 11th day of September, 1953, for hearing on the petition of G. L. Curtis Company, the petition of the Receiver to sell Personal Property and Objection to Receiver's Petition to Sell Property; the Receiver being present in person and by his counsel, C. R. McFall and Warren H. Lynch, the Bank of Douglas being present by M. E. Zetterholm and his counsel, A. Y. Holesapple, the

bankrupt being present by its counsel, William K. Richey, and G. L. Curtis Company being present by its counsel, Edward W. Scruggs of Scruggs and Rucker, and evidence, oral and documentary, having been introduced in evidence, the Court having duly considered the same, does now find:

I.

That on the 6th day of March, 1952, G. L. Curtis Company executed and delivered to Oracle Engineering and Sales Corporation its check numbered 4 in the sum of \$6,500.00, payable to H. E. Zetterholm and Ira L. Hart, Trustees, Exhibit No. 1;

II.

That in exchange for the check of G. L. Curtis Company, said Exhibit No. 1, Oracle Engineering and Sales Corporation executed its Bill of Sale to G. L. Curtis Company, Exhibit No. 3, on the 6th day of March, 1952, for the following items of personal property:

8166 pounds—69 sheets—.312 4130 steel
2864 pounds—25 sheets—.312 4130 steel
7532 pounds—62 sheets—5/16" x 18" x 72" 4130 steel
4732 pounds—40 sheets—5/16" x 18" x 72" 4130 steel

III.

That the Bill of Sale executed by Oracle Engineering and Sales Corpoartion to G. L. Curtis Company was not recorded in the office of the County Recorder of Pima County, Arizona;

IV.

That on the said 6th day of March, 1952, the personal property described in the Bill of Sale exe-

cuted by Oracle Engineering and Sales Corporation was in the possession of Allison Steel Manufacturing Company in Phoenix, Arizona;

V.

That on the 14th day of March, 1952, Oracle Engineering and Sales Corporation notified Allison Steel Manufacturing Company that the property described in the Bill of Sale executed by Oracle Engineering and Sales Corporation on the 6th day of March, 1952, Exhibit No. 3, was the property of G. L. Curtis, by letter, Exhibit No. 4 herein;

VI.

That on the 20th day of March, 1952, Allison Steel Manufacturing Company acknowledged to Oracle Engineering and Sales Corporation that it recognized the property described in Bill of Sale executed on the 6th day of March, 1952, Exhibit No. 3, as the property of G. L. Curtis;

VII.

That the value of the steel described in the Bill of Sale executed by Oracle Engineering and Sales Corporation, Exhibit No. 3, is not in excess of \$25.00 per ton as scrap;

VIII.

That there is no ready market for the steel because of its alloy content;

IX.

That said steel would have a market other than that of scrap only in the event a person having a particular type of contract had use for the same;

and that such a person is not apparently available to purchase said steel;

X.

That M. E. Zetterholm and Ira L. Hart as Trustees who received the check drawn by G. L. Curtis Company, Exhibit No. 1, and delivered in exchange for the Bill of Sale executed by Oracle Engineering and Sales Corporation, Exhibit No. 3, received said money and used the same on behalf of Oracle Engineering and Sales Corporation in a revolving fund in the sum of \$30,000.00 theretofore paid into said fund by G. L. Curtis and which \$30,000.00 was considered as a loan secured by assignments of certain accounts of Oracle Engineering and Sales Corporation and was administered by said Trustees for the use and benefit of Oracle Engineering and Sales Corporation and was in addition to the \$30,000.00 theretofore paid into said fund and secured by said assignment;

XI.

That H. W. Murphy as president of Oracle Engineering and Sales Corporation, in the name of Oracle Engineering and Sales Corporation made several attempts to sell the steel described in said Bill of Sale, Exhibit No. 3, for the account of G. L. Curtis Company after the execution of said Bill of Sale;

Conclusions of Law

I.

The Bill of Sale executed by Oracle Engineering and Sales Corporation, Exhibit No. 3, to G. L. Curtis

Company constituted a sale of the steel described in said Exhibit No. 3 to G. L. Curtis Company;

II.

The Bill of Sale executed by Oracle Engineering and Sales Corporation to G. L. Curtis Company, Exhibit No. 3, constituted a transfer of the property of Oracle Engineering and Sales Corporation in exchange for a present fair consideration as defined by the Bankruptcy Act;

III.

The transfer of the property of Oracle Engineering and Sales Corporation to G. L. Curtis Company did not constitute a preference under the provisions of the Bankruptcy Act;

Alternative Additional Findings of Fact and Conclusions of Law

Without admitting the correctness thereof, but insisting that it is an erroneous finding, contrary to the evidence, in the event the Court makes the following finding or one of like import:

“The Bill of Sale executed by Oracle Engineering and Sales Corporation, Exhibit No. 3, to G. L. Curtis Company, was executed as security for the repayment to G. L. Curtis Company of the sum of \$6,500.00 represented by Exhibit No. 1 paid into the revolving fund.”

then the petitioner, G. L. Curtis Company, proposes the following Conclusions of Law:

I.

The Bill of Sale executed by Oracle Engineering and Sales Corporation to G. L. Curtis Company, Exhibit No. 3, constituted a transfer of the property of Oracle Engineering and Sales Corporation in exchange for a present fair consideration as defined by the Bankruptcy Act.

II.

The notice to Allison Steel Manufacturing Company executed by Oracle Engineering and Sales Corporation, Exhibit No. 4, that the steel was the property of G. L. Curtis Company and the acceptance thereof by Allison Steel Manufacturing Company, Exhibits Nos. 5 and 6, constituted a change of possession within the terms of Section 62-502, Arizona Code Annotated, 1939.

III.

The execution of the Bill of Sale, Exhibit No. 3, and the change of possession of the steel described therein constituted a pledge for the repayment to G. L. Curtis Company of the sum of \$6,500.00 paid by it to M. E. Zetterholm and Ira L. Hart, Trustees, Exhibit No. 1.

IV.

By the provisions of Section 62-523, ACA, 1939, the Bill of Sale being accompanied by change of possession, although intended to operate as a lien upon personal property instead of a transfer of ownership, was not required to be recorded to be valid against third persons or creditors of Oracle Engineering and Sales Corporation, and is not

fraudulent or voidable by any creditor of the bankrupt, or by the Receiver herein pursuant to the provisions of the Bankruptcy Act.

V.

G. L. Curtis Company is entitled to the possession of the steel described in Bill of Sale, Exhibit No. 3, until it is paid the sum of \$6,500.00 by Oracle Engineering and Sales Corporation, or the Receiver herein.

Respectfully submitted,

SCRUGGS AND RUCKER,
Attorneys for G. L. Curtis and
G. L. Curtis Company.

By E. F. RUCKER.

EXHIBIT E

In the United States District Court
for the District of Arizona
No. B-641, Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES CORPORATION, an Arizona Corporation,
Bankrupt.

OBJECTION TO RECEIVER'S
PETITION TO SELL PROPERTY

Comes now G. L. Curtis Company and files its objection to the Receiver's Petition to Sell Personal Property herein;

The petition of G. L. Curtis Company, heretofore filed herein on or about the 17th day of August, 1953, is by reference made a part hereof, and your petitioner prays the Court that the petition of the Receiver to sell said personal property be denied for the reason that the Receiver has no right, interest or claim of any kind or character to said personal property.

SCRUGGS AND RUCKER,

By E. F. RUCKER,

Attorneys for G. L. Curtis
Company.

EXHIBIT F

In the District Court of the United States
in and for the District of Arizona

No. B-641, Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES CORPORATION, an Arizona Corporation,

Bankrupt.

OBJECTIONS OF G. L. CURTIS COMPANY
TO FINDINGS AND ORDER PROPOSED
BY RECEIVER

Comes now G. L. Curtis Company and objects to Finding of Fact No. 5, proposed by the Receiver herein on the Receiver's Petition to Sell Personal

Property on the ground and for the reason that the Bill of Sale given by Oracle Engineering and Sales Corporation to G. L. Curtis Company was a sale of the property for which a present fair consideration was given and the finding proposed is contrary to the evidence.

Comes now G. L. Curtis Company and in the alternative, in the event the Court enters the said proposed Finding of Fact No. 5, objects to the Finding of Fact numbered 6 which is a Conclusion of Law proposed by the Receiver herein on the ground and for the reason that the same is an incorrect statement of the law as set forth in sections 62-502 and 62-523, ACA, 1939, wherein it is stated in effect that when a change of possession occurs, a chattel mortgage need not be recorded.

Without waiving the foregoing objections, G. L. Curtis Company further objects to the Findings of Fact and Conclusions of Law proposed by the Receiver on the Petition to Sell Personal Property on the ground and for the reason that they fail to correctly state the evidence and the law applicable thereto.

Respectfully submitted,

SCRUGGS AND RUCKER,

By E. F. RUCKER,

Attorneys for G. L. Curtis
Company.

Receipt of copy acknowledged.

[Endorsed]: Filed October 26, 1953.

In the District Court of the United States
in and for the District of Arizona

B-641, Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES COR-
PORATION, an Arizona Corporation,

Bankrupt.

OBJECTIONS TO FINDINGS OF FACT AND
CONCLUSIONS OF LAW PROPOSED BY
G. L. CURTIS COMPANY OF PETITION
OF RECEIVER FOR AUTHORITY TO
SELL CERTAIN PERSONAL PROPERTY,
ETC.

Comes now Kenneth S. Hammes receiver herein and objects to the Findings of Fact and Conclusions of Law proposed by G. L. Curtis Company filed herein on the general grounds that they are incomplete, contrary to the evidence set forth at the hearing had in this matter, and that they incorrectly state the law pertaining to the evidence taken.

More specifically, the receiver objects to findings Nos. VIII and IX as being immaterial and incorrect and to finding No. X in that it is an incomplete statement of the evidence.

Objects to conclusions of law Nos. I and II as being contrary to the evidence and in the light of such objections to No. III as being immaterial.

Objects to finding No. I under G. L. Curtis Company's alternative additional findings of fact and conclusions of law in that it is an incorrect statement of the law and evidence and to finding No. II in that it is an incorrect statement of the law. (See receiver's reply to G. L. Curtis Company's objections to receiver's findings filed herein.)

Objects to finding No. IV as incomplete, incorrect and an improper statement of the law and the evidence herein and objects to finding No. V in that it is improper according to the law and the evidence in that the position of G. L. Curtis Company can be no better than that of any other unsecured creditor.

/s/ WARREN H. LYNCH,
Attorney for Kenneth S. Hammes, Receiver in
Bankruptcy.

Affidavit of mail attached.

[Endorsed]: Filed September 18, 1953.

In the District Court of the United States
in and for the District of Arizona
No. B-641, Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES CORPORATION, an Arizona Corporation,

Bankrupt.

REPLY TO G. L. CURTIS COMPANY'S OBJECTIONS TO RECEIVER'S FINDINGS AND ORDER

Comes now Kenneth S. Hammes, receiver, and in reply to the objections of the G. L. Curtis Company to the Findings and Order proposed by said receiver filed herein sets forth the following:

Objection is taken by said G. L. Curtis Company to receiver's finding No. 5 on the grounds that it is contrary to the evidence. This finding is correct and the evidence can in no way be tortured into disclosing an outright sale. Prior to the date of the transaction G. L. Curtis told Mr. M. E. Zetterholm, trustee, that he needed additional security from the bankrupt if he was to advance another \$6,500.00 into the trust for the benefit of said bankrupt. He advanced said money into the trust, the conditions of which were that all monies advanced by him were to be returned to him, and took a chattel mortgage in the form of a bill of sale. This cannot be construed as anything better than a secured loan. On numerous occasions prior to this Curtis loaned money to the bankrupt in exactly the same manner,

taking a bill of sale as security in lieu of a chattel mortgage. G. L. Curtis Company filed a petition herein requesting that the said other bills of sale be declared mortgages, which the court granted and said Curtis Company cannot be heard to say that this one was a valid bill of sale merely because it overlooked recording same, with all the evidence entirely to the contrary. The one exception is a letter written by the bankrupt's president to the Allison Steel Manufacturing Company of Phoenix, stating that G. L. Curtis (said president's father-in-law) had purchased the steel, which said letter was promptly buried in the files of said company, who, knowing the relationship, did not even, according to their testimony, bother to change the storage account out of the name of the bankrupt.

G. L. Curtis Company further objects to the receiver's finding No. 6, which states in effect that said bill of sale as an unrecorded chattel mortgage has no force and effect as against the receiver, on the grounds that it is an incorrect statement of the law as set forth in Sections 62-502 and 62-523, A.C.A., 1939. It is obvious that when the court ruled in open court that the receiver has valid title to said steel set forth in said chattel mortgage, that said receiver may sell same and that any claims of G. L. Curtis Company to it be denied, that he had considered the point raised here although said point, as stated in its letter, was overlooked by said Curtis Company.

The above-cited section in fact states the following:

Section 62-502: "Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except of personal property when accompanied by an actual change of possession, which is to be deemed a pledge." (Emphasis added.)

Section 62-523: "A chattel mortgage or other instrument of writing intended to operate as a mortgage or lien upon personal property, which is not accompanied by an immediate delivery and followed by an actual and continued change of possession of the property mortgaged or pledged by such instrument, is void as against the creditors of the mortgagor. * * *" (Emphasis added.)

The purpose of these statutes is to give either actual or constructive notice to creditors. It cannot possibly be said here that there was an immediate delivery followed by actual and continued change of possession of the property mortgaged.

The steel was admittedly owned and stored by the bankrupt with the Allison Steel Manufacturing Company of Phoenix. After the date of the chattel mortgage the steel company continued to carry the steel as stored for the account of the bankrupt and still continues same. The president of the bankrupt sent letters and telegrams stating that the bankrupt had the steel to sell or dispose of and nationally advertised the steel for sale in the name of the bankrupt.

In a letter to the receiver herein dated June 7, 1953, approximately three months ago, said steel company stated it was storing the steel for the account of the bankrupt.

There is no question that in the eyes of the creditors, the receiver and the whole community, the steel belonged to the bankrupt and was in the bankrupt's possession and control, and this impression was unquestionably consented to by said G. L. Curtis Company, it being the proper one.

The receiver is vested, as to all property in the possession or control of the bankrupt at the date of bankruptcy, with the rights, remedies and powers of a creditor then holding a lien thereon by legal or equitable proceedings, whether or not such a creditor actually exists; and as to all other property, the receiver is deemed vested with the rights, remedies and powers of a judgment creditor then holding an execution duly returned unsatisfied, whether or not such a creditor actually exists. (See Collier's Bankruptcy Manual, Section 70.01, page 897.)

It is apparent from the above that the objections of G. L. Curtis Company to the Findings and Order proposed by the receiver herein should be denied.

/s/ WARREN H. LYNCH,
Attorney for Kenneth S. Hammes, Receiver in
Bankruptcy.

Affidavit of mail attached.

[Endorsed]: Filed September 18, 1953.

In the United States District Court
for the District of Arizona

No. B-641, Tucson

In the Matter of:

ORACLE ENGINEERING AND SALES COR-
PORATION, an Arizona Corporation,

Bankrupt.

REFEREE'S STATEMENT
OF EVIDENCE

Be it remembered that at the hearing of the Receiver's Petition to Sell Personal Property and the Objections thereto filed by G. L. Curtis Company, and the Petition of G. L. Curtis Company for an Order declaring said G. L. Curtis Company to be the owner of said personal property, held on the 11th day of September, 1953, the following witnesses were sworn and examined and testified in substance as follows:

H. W. Murphy, being first duly sworn, testified that he was president of Oracle Engineering and Sales Corporation on March 6, 1952; that on said day of March 6, 1952, G. L. Curtis Company disbursed for the use of Oracle Engineering and Sales Corporation the sum of \$6,500.00 by delivering its check in said sum to M. E. Zetterholm and Ira L. Hart, as Trustees (Exhibit No. 1 in evidence); that Oracle Engineering and Sales Corporation thereupon delivered to G. L. Curtis Company in consid-

eration of such disbursement an instrument entitled Bill of Sale (Exhibit No. 3 in evidence) wherein was described the steel here in question; that said steel was at that time in the possession of Allison Steel Manufacturing Company in Phoenix, Arizona; that on March 14, 1952, Oracle Engineering and Sales Corporation sent to Allison Steel Manufacturing Company a letter (Exhibit No. 4 in evidence) notifying it of said transaction; that said instrument entitled "Bill of Sale," was not filed or recorded in any county recorder's office; that on several previous occasions when G. L. Curtis Company had loaned money to Oracle Engineering and Sales Corporation it had taken as security therefor instruments similar in form to Exhibit No. 3 in evidence, said instruments having been regarded as chattel mortgages to secure said Loans and having been treated as null and void upon payment of said respective loans; that in one of said transactions a "Bill of Sale" covering the same steel herein involved was given as security and was regarded as a chattel mortgage and treated as of no effect upon repayment of the loan thereby secured; that the transaction herein involved was substantially the same as other previous transactions wherein instruments entitled Bills of Sale were given as security with the effect of chattel mortgages.

Polly S. Moyer, being first duly sworn, testified that on March 6, 1952, she was credit manager for Allison Steel Manufacturing Company; that Allison Steel Manufacturing Company received the instru-

ment marked in evidence as Exhibit No. 4; that Allison Steel Manufacturing Company acknowledged receipt of said notice in a letter directed to Oracle Engineering and Sales Corporation, a copy of which was in Allison Steel Manufacturing Company's files and marked Exhibit No. 5 in evidence herein; that at the time said notice was received the steel was on the books of Allison Steel Manufacturing Company on an account in the name of Oracle Engineering and Sales Corporation, and the name of the account was not changed but the steel remained in the possession of Allison Steel Manufacturing Company and is now in the possession of Allison Steel Manufacturing Company; that subsequent to the day of receipt of Exhibit No. 4 in evidence no service was performed and nothing was done in connection with the steel on behalf of Oracle Engineering and Sales Corporation; that Allison Steel Manufacturing Company has a claim for handling charges and storage on said steel in the amount of \$185.58.

John W. Morgan, being first duly sworn, testified that on March 6, 1952, he was sales manager for Allison Steel Manufacturing Company; that prior thereto Allison Steel Manufacturing Company had received from Oracle Engineering and Sales Corporation possession of the steel herein involved; that said steel was received from Oracle Engineering and Sales Corporation or its agents for fabrication; that said fabricating was not accomplished by reason of failure of dies furnished to Allison Steel

Manufacturing Company and inability of presses to perform the work; that the value of the steel is only that of scrap and that its scrap value is \$25.00 per ton; that in the event a special need for this particular steel which is of a high alloy could be found its value might be somewhat greater than that of scrap; that the steel is for a special and specific use and not in general demand; and that said steel is still in the possession of Allison Steel Manufacturing Company.

M. E. Zetterholm, being first duly sworn, testified that he is an officer of The Bank of Douglas and that on March 6, 1952, he was an officer of said bank; that prior thereto G. L. Curtis Company had established a trust account at The Bank of Douglas called a revolving fund controlled by the witness and by Ira L. Hart, as Trustees, for the use of Oracle Engineering and Sales Corporation, the amounts deposited therein to be repaid by said Oracle Engineering and Sales Corporation, such repayment being secured by assignments of certain accounts of Oracle Engineering and Sales Corporation; that on the said March 6, 1952, he received as one of the Trustees of said revolving fund the check drawn by G. L. Curtis Company in the sum of \$6,500.00 and introduced in evidence herein as Exhibit No. 1; that the proceeds of said check were deposited in said revolving fund account; that he was not present at the negotiations between Oracle Engineering and Sales Corporation and G. L. Curtis Company for the advance of the said funds and the

execution and delivery of the instrument introduced in evidence as Exhibit No. 3; that he had a conversation with G. L. Curtis at about the time of the depositing of the check (Exhibit No. 1) with him in which G. L. Curtis was discussing the means of securing the repayment of any additional money which might be advanced into the revolving fund and G. L. Curtis asked the witness if he could secure such repayment by obtaining a Bill of Sale to certain steel which was owned by Oracle Engineering and Sales Corporation as security for money to be advanced in the revolving fund and was advised to see his lawyer; that the witness deposited the said sum of \$6,500.00 into the said revolving fund; that the duties of the witness and the said Ira L. Hart in relation to funds deposited in said revolving account by G. L. Curtis Company were prescribed by a letter dated February 4, 1952, from G. L. Curtis Company to the witness and the said Ira L. Hart, a copy of which is part of the record in this case.

I certify that the foregoing is a true and complete statement of substantially all of the testimony introduced before me at a hearing at Tucson, Arizona, on the 11th day of September, 1953, in the matter of Oracle Engineering and Sales Corporation, an Arizona corporation, Bankrupt, on Receiver's Petition to Sell Personal Property and the Objections of G. L. Curtis Company thereto and the Petition of G. L. Curtis Company for an Order declaring G. L. Curtis Company to be the owner of

certain steel described in said Petition; and that in addition to said testimony and the documents offered in evidence at said hearing I considered two documents which had theretofore been made a part of the record in this matter, to wit: (1) the letter from G. L. Curtis Company to The Bank of Douglas, dated February 4, 1952, concerning which M. E. Zetterholm testified, and (2) a letter dated July 7, 1953, from Allison Steel Manufacturing Company to Kenneth S. Hammes, concerning the steel here in question, a copy of which is attached to the said Receiver's Petition to Sell Personal Property. Copies of both of said letters are hereto attached as Exhibits "A" and "B," respectively.

Dated at Phoenix, Arizona, this 15th day of March, 1953.

/s/ STANLEY A. JERMAN,
Referee in Bankruptcy.

[Endorsed]: Filed March 9, 1954.

CREDITOR'S EXHIBIT No. 2

(Copy)

March 14, 1952.

Allison Steel Manufacturing Co.,
P.O. Box 6067,
Phoenix, Arizona.

Dear Sirs:

On March 6, 1952, the steel listed below, which you have in your possession, was sold to Mr. G. L. Curtis by this corporation:

8166 pounds—69 sheets—.312 4130 steel
2864 pounds—25 sheets—.312 4130 steel
7532 pounds—62 sheets—5/16" x 18" x 72" 4130 steel
4732 pounds—40 sheets—5/16" x 18" x 72" 4130 steel

This steel is the property of Mr. G. L. Curtis.

Yours very truly,

ORACLE ENGINEERING &
SALES CORPORATION,

H. W. MURPHY,
President.

HWM:lc

[Cancelled check—See Exhibit B attached to Petition of G. L. Curtis Co., etc.]

Received in evidence September 11, 1953.

CREDITOR'S EXHIBIT No. 5

March 20, 1952.

Oracle Engineering & Sales Corporation,
Tucson, Arizona.

Attention: Mr. Howard Stevens.

Refer: Your Purchase Order 577,
Reference File No. A-94-27,
Our Job No. Y-3829,
Bomb Sling Yokes.

Gentlemen:

We wish to acknowledge your letter of March 5 requesting cancellation charge on the above order if the Air Force should cancel your contract. We wish to advise that the amount due on this order as of March 12 is \$83.75. This amount covers the setup charge of dies and labor expended in making sample parts, also handling of material.

Your letter of March 14 by Mr. Murphy advised that the material shipped to us to be used on the above job has been sold to Mr. G. L. Curtis. We assume from this information that your contract with the Air Force has been cancelled. Please advise us if it is in order for us to forward you our invoice in the amount of \$83.75 as a final billing on this job.

Very truly yours,

ALLISON STEEL MANUFACTURING COMPANY,

By JOHN W. MORGAN.

P.S.:

Please advise what disposition you want us to make of the forming dies which you furnished to us on this job.

cc: Harry Stafford,
Dorothy Richter,
Polly Moyer.

Received in evidence September 11, 1953.

CREDITOR'S EXHIBIT No. 6

April 22, 1952.

Oracle Engineering & Sales Corporation,
Tucson, Arizona.

Attention: Mr. Howard Stevens.

Refer: Your P.O. No. 577,
Reference File No. A-94-27,
Our Job No. Y-3829 Bomb Sling Yokes.

Gentlemen:

Since there has been no new development regarding the above job, we assume that you will wish to close this job out. Please advise us if we should forward to you our final billing on this job at this time.

We also note that the plate which you sold to Mr.

G. L. Curtis has not yet been picked up. Please advise on this matter also.

Very truly yours,

ALLISON STEEL MANUFACTURING COMPANY,

By JOHN W. MORGAN.

Received in evidence April 22, 1952.

PETITIONER'S EXHIBIT No. 5

Tucson, Arizona,
February 4, 1952.

Mr. M. E. Zetterholm and
Mr. Ira L. Hart, as Trustees,
c/o The Bank of Douglas,
902 North Stone Avenue,
Tucson, Arizona.

Gentlemen:

I herewith deliver to you my check in the sum of \$13,500.00 payable to your order as trustees. You are instructed to deposit the proceeds of this check to your account as trustees in The Bank of Douglas, 902 North Stone Avenue, Tucson, Arizona. In consideration of your accepting this letter and assuming the duties of trustees hereunder, I do hereby agree to advance to you as such trustees, amounts in the total aggregate sum of \$30,000.00 as requested by you, the above-mentioned amount being included in said aggregate sum. The check dated February 1,

1952, signed by me, in the sum of \$1,500.00 payable to the order of The Bank of Douglas, in trust, likewise is included in said aggregate sum.

The checks that are signed from time to time on this trust account in The Bank of Douglas shall bear the signatures of any two of the following parties: F. C. Brophy, M. E. Zetterholm, Ira L. Hart, or any nominee of F. C. Brophy.

I hereby instruct you to deposit in said trust account any and all such funds as may be paid to The Bank of Douglas, as assignees, under the following Air Force contract and other Purchase Orders; and such additional Purchase Orders as may hereafter be acquired during the term of this instrument.

Date	Account Name	Number	Amount
Jan. 22, 1925	Goodyear Aircraft Corporation	15,212-A	\$17,724.00
Jan. 22, 1925	Goodyear Aircraft Corporation	15,210-A	18,001.20
Nov. 14, 1951	Goodyear Aircraft Corporation	10,870	28,730.00
Nov. 14, 1951	Goodyear Aircraft Corporation	10,871	28,730.00
Nov. 14, 1951	Goodyear Aircraft Corporation	10,872	14,365.00
Nov. 14, 1951	Goodyear Aircraft Corporation	10,873	14,365.00
Nov. 14, 1951	Goodyear Aircraft Corporation	10,874	14,365.00
Nov. 14, 1951	Goodyear Aircraft Corporation	10,875	12,641.20
Jan. 18, 1952	J. N. Fauver Co., Inc.	OM 10758	24,474.77
Nov. 23, 1951	J. N. Fauver Co., Inc.	OM 10220	3,736.50
Dec. 15, 1951	Air Materiel Command, Wright-Patterson Air Force Base	AF 33(038)-28495	12,048.96
Nov. 29, 1951	Aero Design & Engineering Co.	5114	1,840.00
Jan. 5, 1952	Goodyear Aircraft Corporation	15,183	143.60
Jan. 5, 1952	Goodyear Aircraft Corporation	15,184	176.40
Jan. 5, 1952	Goodyear Aircraft Corporation	15,185	775.80
Jan. 9, 1952	Goodyear Aircraft Corporation	15,157	1,309.80
Jan. 22, 1952	Goodyear Aircraft Corporation	15,197-A	1,504.50
Dec. 11, 1951	General Motors Corporation	KDS 12858	524.43

You are hereby authorized, in your discretion, or in the discretion of either of you and F. C. Brophy or his nominee, to transfer funds of said trust account from time to time into the checking account of Oracle Engineering and Sales Corporation, it being understood that the funds thus transferred to the Oracle Engineering and Sales Corporation are for the purpose of paying or covering checks issued by said Oracle Engineering and Sales Corporation.

The instructions hereby given to you shall be irrevocable up to and including the 1st day of May, 1952, unless you receive instructions from me extending the above termination date; then upon that date or the extended date as the case may be, you are forthwith to issue your check in the total balance of the amount of said trust account at that time to my order so as to transfer the balance of such funds to me. But the amount of funds transferred to me shall in no event exceed the net aggregate amount advanced by me hereunder; and as to any funds then in excess of these funds advanced by me they shall be transferred by you to said Oracle Engineering and Sales Corporation, whereupon you and each of you, including Mr. F. C. Brophy and/or any nominee or nominees that he may have appointed hereunder, shall be forthwith fully and completely discharged from any liability in connection herewith.

You are to keep an accounting of all of your receipts and disbursements hereunder and are to provide me with a monthly summary of such ac-

counting or such other accountings whenever requested by me.

It is expressly understood by me that your responsibility hereunder, as well as that of Mr. Brophy and/ or any nominee or nominees appointed by him, shall be to use reasonable care and ordinary diligence to carry out the intent of this letter.

Very truly yours,

/s/ G. L. CURTIS.

All of the provisions of the foregoing letter of instructions are hereby approved this 6th day of February, 1952.

ORACLE ENGINEERING AND
SALES CORP.,

By /s/ H. W. MURPHY,
President.

The foregoing letter of instructions received and accepted by us this 6th day of February, 1952.

/s/ M. E. ZETTERHOLM,

/s/ IRA L. HART.

This letter of instruction has been executed in quintuplicate.

Filed April 24, 1953.

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE OF REVIEW

To the Honorable Judges of the District Court:

I, Stanley A. Jerman, the Referee in Bankruptcy for this District, do hereby certify as follows:

In the course of this proceeding I made and entered on October 9, 1953, an order entitled "Findings and Order" by which I authorized the receiver herein to sell certain personal property herein described and found that neither G. L. Curtis nor G. L. Curtis Company owned or had any interest in or to said personal property.

On October 26, 1953, G. L. Curtis Company, a corporation, an adverse claimant to the property concerned in the above-mentioned order, filed herein its petition for review of said order.

The errors complained of by the said petitioner are set forth in full in its petition.

The questions presented for review are:

1. Whether the transaction concerned was a sale of the property by the bankrupt to G. L. Curtis Company or was a mortgage of said property to secure a debt; and

2. Regardless of whether it was a sale or mortgage whether there was such a change of possession as to give G. L. Curtis Company any interest in said property as against receiver herein.

The following papers are herewith submitted:

1. Petition of G. L. Curtis Company for Review of Order entered by the Referee on the 9th day of October, 1953, Granting Petition of the Receiver to sell personal property.
2. Receiver's Petition to Sell Property, filed September 9, 1953.
3. Objections to Receiver's Petition to Sell Property, filed September 14, 1953.
4. Findings of Fact and Conclusions of Law Proposed by G. L. Curtis Company on Petition of Receiver for Authority to Sell Certain Personal Property, Objections to such Petition by G. L. Curtis Company, and Petition of G. L. Curtis Company for Order Declaring G. L. Curtis Company to Be the Owner of Certain Personal Property, filed September 21, 1953.
5. Objections to Findings of Fact and Conclusions of Law Proposed by G. L. Curtis Company, filed September 18, 1953.
6. Objections of G. L. Curtis Company to Findings and Order Proposed by Receiver, filed September 21, 1953.
7. Reply to G. L. Curtis Company's Objections to Receiver's Findings and Order, filed September 18, 1953.
8. Findings and Order, filed October 14, 1953.
9. Referee's Statement of Evidence.

10. All exhibits filed at the hearing.

11. Letter from G. L. Curtis Company to The Bank of Douglas, dated February 4, 1952.

Dated: May 26th, 1954.

Respectfully submitted,

/s/ STANLEY A. JERMAN,
Referee in Bankruptcy.

[Endorsed]: Filed May 26, 1954.

[Title of District Court and Cause.]

MINUTE ENTRY OF—MONDAY, JUNE 7, 1954

This case comes on for setting of Referee's Certificate on Petition for Review of G. L. Curtis Company for hearing. No appearance is had by or on behalf of the bankrupt. Edgar Rucker, Esquire, is present on behalf of the reviewing creditor. Richard Fish, Esquire, appears for Reed Carlock, Esquire, attorney for the trustee, and

It Is Ordered that Referee's Certificate of Review is set for hearing on Monday, June 14, 1954, at 2 o'clock p.m.

[Title of District Court and Cause.]

MINUTE ENTRY OF—MONDAY, JUNE 14, 1954

The Referee's Certificate on Petition for Review of G. L. Curtis Company comes on regularly for hearing this day. Edward W. Scruggs, Esquire, is present on behalf of the reviewing creditor. Reed Carlock, Esquire, appears on behalf of the trustee.

Hearing is now had on the Referee's Certificate of Review, and

It Is Ordered that said matter be submitted and by the Court taken under advisement.

[Title of District Court and Cause.]

MINUTE ENTRY OF—MONDAY JUNE 21, 1954

Upon the Petition of G. L. Curtis Company for review of order entered by the referee on the ninth day of October, 1953, granting petition of the receiver to sell personal property, filed October 26, 1953; upon the Certificate of Referee dated May 26, 1954, and filed; upon the proceedings had before the referee as appears from his said certificate; and upon orally hearing counsel for the parties,

It Is Ordered that the order of the referee entered herein on the ninth day of October, 1953, ordering the receiver to sell and dispose of certain steel plate described in said order, be, and it is, affirmed.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that G. L. Curtis Company hereby appeals to the United States Court of Appeals for the Ninth Circuit from a final judgment entered in these proceedings on the 21st day of June, 1954, affirming the order of the Referee entered herein October 9, 1953, ordering the Receiver to sell and dispose of certain steel plate described in said order.

Dated this 14th day of July, 1954.

SCRUGGS AND RUCKER.

By /s/ EDWARD W. SCRUGGS,
Attorneys for Appellant.

[Endorsed]: Filed July 14, 1954.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO RECORD ON APPEAL

United States of America,
District of Arizona—ss.

I, Wm. H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the matter of Oracle Engineering and Sales Corporation, an Arizona

corporation, Bankrupt, numbered B-641 Tucson, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of the minute entries are true and correct copies of the originals thereof remaining in my office in the city of Tucson, State and District aforesaid.

I further certify that said original documents, and said copies of the minute entries, constitute the entire record on appeal in said case, as designated in the Appellant's Designation of Record to be included in Record on Appeal filed therein and made a part of the record attached hereto, and the same are as follows, to wit:

1. Referee's Certificate of Review and Record on Review.
2. Minute entry of June 7, 1954.
3. Minute entry of June 14, 1954.
4. Minute entry of June 21, 1954.
5. Notice of Appeal.
6. Designation of Record to be Included in Record on Appeal.

I further certify that a cash cost bond on appeal has been deposited in the Registry Fund of this Court by the Appellant.

I further certify that the Clerk's fee for preparing and certifying this said record on appeal

amounts to the sum of \$1.60 and that said sum has been paid to me by counsel for the Appellant.

Witness my hand and the seal of said Court at Tucson, Arizona, this 18th day of August, 1954.

[Seal] WM. H. LOVELESS,
Clerk,

By /s/ ELAINE R. WHELAN,
Deputy.

[Endorsed]: No. 14488. United States Court of Appeals for the Ninth Circuit. *G. L. Curtis Company, Appellant, vs. Kenneth S. Hammes, Trustee in Bankruptcy of the Estate of Oracle Engineering and Sales Corporation, a Corporation, Bankrupt, Appellee.* Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed August 20, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14488

G. L. CURTIS COMPANY,

Appellant,

vs.

KENNETH S. HAMMES, Trustee,

Appellee.

APPELLANT'S STATEMENT OF POINTS ON
• WHICH IT INTENDS TO RELY ON AP-
PEAL

Appellant herein states that the points upon which it intends to rely on appeal in this action are as follows:

I.

The Court erred in affirming the action of the Referee ordering that the Receiver be authorized and permitted to sell or dispose of personal property described as

193	pes	5/16"	Plate	18"	x	72"	—weight	22,147 #
1	"		"	18"	x	56"		89 #
1	"		"	18"	x	48"		77 #
1	"		"	18"	x	24"		38 #

Total weight 22,351 #

free and clear of liens at public or private sale without notice to creditors and that Allison Steel Manufacturing Company release the personal property

to the Receiver or his order upon payment to said company of their charges, in that said personal property before the filing of the petition for an arrangement under Chapter XI of the Bankruptcy Act in the District Court of the United States in and for the District of Arizona in this case had been pledged to G. L. Curtis Company for a present, fair consideration and possession of said personal property had been transferred from Oracle Engineering and Sales Corporation, the bankrupt, to the possession of G. L. Curtis Company prior to the filing of such petition for an arrangement under Chapter XI of the Bankruptcy Act.

II.

The Court erred in affirming the action of the Referee denying the petition of G. L. Curtis Company for possession of personal property consisting of

193 pcs	5/16"	Plate	18" x 72"	—weight	22,147#
1	"	"	18" x 56"		89#
1	"	"	18" x 48"		77#
1	"	"	18" x 24"		38#

Total weight 22,351#

and overruling the objection of G. L. Curtis Company to the sale of said property by the Receiver free and clear of any claim of lien of G. L. Curtis Company.

III.

The Court erred in affirming the action of the

Referee in refusing to make the following conclusions of law requested by appellant:

The Bill of Sale executed by Oracle Engineering and Sales Corporation to G. L. Curtis Company, Exhibit No. 3, constituted a transfer of the property of Oracle Engineering and Sales Corporation in exchange for a present fair consideration as defined by the Bankruptcy Act.

The notice to Allison Steel Manufacturing Company executed by Oracle Engineering and Sales Corporation, Exhibit No. 4, that the steel was the property of G. L. Curtis Company and the acceptance thereof by Allison Steel Manufacturing Company, Exhibits Nos. 5 and 6, constituted a change of possession within the terms of Section 62-502, Arizona Code Annotated, 1939.

The execution of the Bill of Sale, Exhibit No. 3, and the change of possession of the steel described therein constituted a pledge for the repayment to G. L. Curtis Company of the sum of \$6,500.00 paid by it to M. E. Zetterholm and Ira L. Hart, Trustees, Exhibit No. 1.

By the provisions of Section 62-523, ACA, 1939, the Bill of Sale being accompanied by change of possession, although intended to operate as a lien upon personal property instead of a transfer of ownership, was not required to be recorded to be valid against third persons or creditors of Oracle Engineering and Sales Corporation, and is not fraudulent or voidable by any creditor of the bank-

rupt, or by the Receiver herein pursuant to the provisions of the Bankruptcy Act.

G. L. Curtis Company is entitled to the possession of the steel described in Bill of Sale, Exhibit No. 3, until it is paid the sum of \$6,500.00 by Oracle Engineering and Sales Corporation, or the Receiver herein.

SCRUGGS AND RUCKER,

By/ s/ EDWARD W. SCRUGGS,
Attorneys for Appellant.

Affidavit of mail attached.

[Endorsed]: Filed September 1, 1954.